

NTSB Order No. EA-5050

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of July, 2003

MARION C. BLAKEY
Administrator,
Federal Aviation Administration,

Complainant,

v.

PEACHIE D. TIANVAN,

Respondent.

Docket SE-16621

Respondent appeals the oral initial decision of Administrative Law Judge William A. Pope, II, issued on February 4, 2003.¹ By that decision, the law judge affirmed the Administrator's emergency revocation of all airman certificates held by respondent for violations of sections 61.113(a), 91.7(a), 91.9(a), 91.13(a), 119.5(g), and 135.293(a) of the Federal

¹ An excerpt of the hearing transcript containing the law judge's decision is attached.

Aviation Regulations (FARs).² We deny respondent's appeal.

The Administrator's June 27, 2002 Emergency Order of Revocation alleged, among other things, the following facts and circumstances:

1. At all times material herein you were and are now the holder of Private Pilot Certificate No. 2541256.
2. On or about April 19, 2001, you operated as pilot in command civil aircraft N4103R, a Piper PA-32-300, the property of another, on a flight carrying four passengers that departed Fort Lauderdale International Airport.
3. During the above flight, you carried property for compensation or hire.
4. At all times material herein, the Type Certificate Data Sheet for civil aircraft N4103R provided for a maximum weight of 3400 lbs.
5. At all times material herein, the Type Certificate Data sheet and Pilot's Operating Handbook for N4103R provided for a maximum baggage weight in the nose baggage compartment of 100 lbs.
6. At all times material herein, the Type Certificate Data Sheet for civil aircraft N4103R provided for a Center of Gravity (CG) range of 91.4 to 95.5 at 3400 lbs.
7. At the time of your flight, the takeoff weight of N4103R was approximately 3412 lbs. and therefore exceeded the maximum weight allowed.
8. At the time of your flight, the weight in the nose baggage compartment of N4103R was approximately 243.75 lbs. and therefore exceeded the maximum baggage weight allowed.
9. At the time of your flight, the calculated CG of N4103R was 87.12 and therefore outside of the allowed range.
10. By reason of the foregoing, N4103R was not airworthy at the time of your flight.

² The relevant portions of FAR sections 61.113 (14 C.F.R. Part 61), 91.7, 91.9 and 91.13 (14 C.F.R. Part 91), 119.5 (14 C.F.R. Part 119), and 135.293 (14 C.F.R. Part 135) are set forth in Appendix A to this Opinion and Order.

11. Due to the conditions described above, N4103R crashed shortly after takeoff, fatally injuring the above-mentioned four passengers.

12. Your operation of N4103R as described above was careless and reckless in that your operation endangered the lives and property of others.

13. Prior to and on April 19, 2001, you operated as a commercial operator in that you operated as pilot in command N4103R for the purposes of carriage of mail for compensation or hire between Fort Lauderdale, Florida and Freeport, Bahamas.

14. At the time of your flight on April 19, 2001 and your operations as described in Paragraph 13, you did not hold a Commercial Pilot certificate.

15. At the time of your flight on April 19, 2001 and your operations as described in Paragraph 13, you did not hold an appropriate certificate and/or appropriate operations specifications allowing you to operate as a direct air carrier or commercial operator.

16. At the time of your flight on April 19, 2001, you had not passed a written or oral test, given by the Administrator or an authorized check pilot, as required under Part 135 of the Federal Aviation Regulations (FAR).

17. Pursuant to Section 135.7 of the FAR, the rules and regulations of Part 135 applied to your operations described above, and at the time of your operations you were not in compliance with some of these requirements; further, as a [sic] the holder of a private pilot certificate you were not eligible to meet the qualifications and requirements of this Part.

The law judge, based on all of the evidence presented at the hearing, concluded that the Administrator had met her burden of showing that respondent had violated the FARs as alleged. In reaching his conclusions, the law judge gave more weight to the Administrator's expert (who participated in the official investigation of the accident) than respondent's expert, and, significantly, he did not credit the exculpatory elements of respondent's testimony.

On appeal, respondent essentially registers her disagreement with the law judge's conclusion that her various transgressions -- the overweight condition of the aircraft, the fact that the baggage compartment weight limit was exceeded, the fact that she was carrying mail and other cargo for commercial purposes without proper certification, the fact that the aircraft, as loaded on the accident flight, had a CG conservatively estimated by the FAA inspector to be at least several inches forward of the forward CG limit -- merit the FAA's revocation of her certificates. Aside from reiterating her discredited exculpatory testimony, however, respondent offers virtually no support for her contentions.

Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (the Board defers to the credibility determinations of its law judges absent a showing that they are clearly erroneous). Respondent's contentions also fail to demonstrate that the law judge erred in affirming revocation. See Administrator v. Bennett, NTSB Order No. EA-4762 (1999) (a "demonstrated non-compliance disposition is, in and of itself, a basis for revocation"). We discern no basis to disturb the law judge's decision or the Administrator's order.³

³ Respondent's remaining arguments have even less merit, and, for the most part, are based upon premises that are not supported by the facts and evidence in this record. For example, respondent's counsel's assertion that the "genuine reason the [FAA] proposed revocation here was because the [FAA] presumed that Respondent was carrying passengers for compensation or hire" is entirely at odds with both the hearing transcript and the text of the Administrator's revocation order. Similarly, respondent's counsel's characterization of the FAA inspector's testimony regarding his efforts to estimate the accident aircraft's CG is disingenuous; most importantly in this regard, respondent's

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decision affirming the Administrator's Emergency Order of Revocation of all airman certificates held by respondent is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

(..continued)
counsel completely ignores repeated testimony that in the instances where the weight of the passengers or cargo could not be precisely determined, CG calculations were made by assuming such passengers and cargo were in a position most favorable to a balanced aircraft.

Appendix A

Sec. 61.113 Private pilot privileges and limitations: Pilot in command.

(a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

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Sec. 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition;

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Sec. 91.9 Civil aircraft flight manual, marking, and placard requirements.

(a) [N]o person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane...Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

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Sec. 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

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Sec. 119.5 Certifications, authorizations, and prohibitions.

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(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any

deviation or exemption authority, if issued to that person or that person's representative.

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Sec. 135.293 Initial and recurrent pilot testing requirements.

(a) No certificate holder may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas[]....

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